

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ROBERT HOLMAN,)	
)	
Plaintiff,)	
)	
v.)	No. 1:21-cv-01085-STA-jay
)	
THOMAS J. VILSACK, in his official capacity as Secretary of the United States Department of Agriculture; and ZACH DUCHENEAUX, in his official capacity as Administrator of the Farm Service Agency,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO CONTINUE PRELIMINARY INJUNCTION HEARING
AND MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTION FOR
PRELIMINARY INJUNCTION**

On June 2, 2021, Plaintiff Robert Holman filed a complaint challenging the U.S. Department of Agriculture’s (USDA) implementation of Section 1005 of the American Rescue Plan Act (ARPA). Pub. L. No. 117-2 (Mar. 21, 2021). In Section 1005, Congress appropriated “such sums as may be necessary” to pay up to 120 percent of certain direct or guaranteed USDA farm loans held by a “socially disadvantaged farmer or rancher” (SDFR) and outstanding as of January 1, 2021. ARPA § 1005(a)(1)-(2). Plaintiff challenges the USDA’s implementation of Section 1005 on equal protection and other grounds, *see* Compl. ¶¶ 64-85, including based on his assertion that USDA’s use of ethnic and racial classifications to allocate the funds under Section 1005 is not narrowly tailored to serve a compelling government interest, *see id.* ¶¶ 64-74. On June 6, 2021, Plaintiff filed a motion for preliminary injunction seeking to “immediately enjoin[]”

USDA's implementation of the program, Pl.'s Mot. for Prelim. Inj. 1, ECF No. 7, noting that USDA is "just beginning to implement" Section 1005, *id.* at 1.

Defendants' response to Plaintiff's preliminary injunction motion is due on June 21, 2021, according to Local Rule 7.2(a)(2). On June 8, 2021, the Court scheduled an in person hearing on Plaintiff's motion for June 17, 2021, at 9:00 a.m. in Jackson, Tennessee. *See* ECF No. 10. For the reasons set forth below, Defendants respectfully request a three-day continuance of their deadline to respond to Plaintiffs' preliminary injunction motion, up to and including June 24, 2021, and a continuance of the hearing until the week of June 28, 2021, or a date thereafter that is convenient for the Court and opposing counsel. Counsel for Defendants conferred with counsel for Plaintiff, who indicated that he opposes both Defendants' motion for a continuance of the hearing and any extension of Defendants' response deadline.

Section 1005 is being challenged in five other district courts, in addition to this one. *See Miller v. Vilsack*, No. 4:21-cv-595 (N.D. Tex., filed Apr. 26, 2021); *Faust v. Vilsack*, No. 21-cv-548 (E.D. Wis., filed Apr. 29, 2021); *Wynn v. Vilsack et al.*, No. 3:21-cv-514-MMH-JRK (M.D. Fla., filed May 18, 2021); *Carpenter v. Vilsack et al.*, No. 21-cv-103-F (D. Wyo., filed May 24, 2021); *Kent v. Vilsack*, No. 21-cv-450 (S.D. Ill., filed June 7, 2021). In four of those cases, the plaintiffs have also moved for preliminary relief. Undersigned counsel in the Federal Programs Branch in Washington, DC, is representing USDA here and in these five other cases and currently has oppositions to motions for preliminary injunctions due on June 11 and June 18, 2021, and has been ordered to appear for a preliminary injunction hearing in Jacksonville, Florida on either June 15 or 16 (that court has not set a final hearing date yet). Given counsel's obligations in the other ARPA-related cases, as well as other litigation obligations, Defendants respectfully request a

modest continuance of both the deadline for the Government's opposition to Plaintiff's motion for preliminary injunction and the hearing on that motion.

The Government would like the Court to have the benefit of briefing on the issues raised in Plaintiff's motion for preliminary motion before the hearing and thus requests a modest extension of three days, or until June 24, 2021, to allow the Government to adequately address those issues. Although the Government has briefed, and is briefing, similar issues in the other cases challenging Section 1005, Plaintiff's second and third claims for relief raise issues that the Government has not yet briefed, and the Government will need to address the particular arguments Plaintiff raises in support of his equal protection claim and motion for preliminary relief, including the case law particular to the Sixth Circuit. To allow for that briefing and the Court's consideration of it before the hearing, and given defense counsel's prior obligations, including an in-person hearing in Jacksonville, Florida either June 15 or 16, 2021, the Government also respectfully requests that the hearing currently scheduled for June 17, 2021, be continued until the week of June 28, 2021. Undersigned counsel would be available to attend a hearing any day that week, as is convenient for the Court and opposing counsel. Accordingly, the Government requests that the Court grant this Motion, reset the hearing on Plaintiff's Motion for Preliminary Injunction, and extend the Government's deadline to respond to the Motion for Preliminary Injunction up to and including June 24, 2021.

DATE: June 9, 2021

Respectfully submitted,

JOSEPH C. MURPHY, JR.
Acting United States Attorney

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Counsel for Defendants

CERTIFICATE OF CONSULTATION

I certify that counsel for Defendants conferred with counsel for Plaintiff regarding this Motion, and he indicated that Plaintiff will oppose this Motion.

s/ Audrey M. Calkins